

WRIT PETITION NO. 280 OF 2004
WITH MISCELANEOUS CIVIL APPLICATION NO. 729 OF 2004

Shri Naguesh Gawas,
major of age,
r/o H.No.52,
Behind the Church,
Bambolim,
Tiswadi, Goa.

... Petitioner.

Versus

1. The State of Goa,
represented through its
Chief Secretary, having
his office at
Secretariat, Panaji,
Goa,
2. The Mamlatdar of Tiswadi
Taluka, having his
office at the Collectorate,
Panaji, Goa,
3. The Collector of
North Goa District,
having his office
at Collectorate, Panaji,
Goa,
4. The Commissioner for
Labour, having his office
at Shram Shakti Bhavan,
Patto Plaza, Panaji,
Goa, and
5. M/s. Kadamba Transport
Corporation, having its
Head Office at Kadamba
Bus Stand, Panaji, Goa,
represented through its
Managing Director.

... Respondents.

Mr. A. V. Nigalye with Ms. Aparna Sadre, advocates for
the petitioner.

Mr. Guru Shirodkar, Additional Government Advocate for
respondent nos.1 to 4.

Mr. D. Ambekar, advocate for the respondent no.5.

MISCELLANEOUS CIVIL APPLICATION NO.729 OF 2004

M/s Kadamba Transport Corporation, having its Head Office at Kadamba Bus Stand, Panaji, Goa, Panaji, Goa, represented through its Managing Director.

... Applicant.

Versus

1. Shri Naguesh Gawas, major of age, r/o H. No.52, Behind Church, Bambolim,
2. The State of Goa,
3. The Mamlatdar of Tiswadi Taluka,
4. The Collector of North Goa District, and

5. The Commissioner for Labour. ... Respondents.

Mr. D. Ambekar, advocate for the applicant.

Mr. A. V. Nigalye with Ms. Aparne Sadre, advocate for the respondent no.1/original petitioner.

Mr. Guru Shiroadkar, Additional Government Advocate for the respondent nos.2 to 5.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 29th September, 2004.

ORAL ORDER (Per Marlapalle, J.)

Heard Mr. Nigalye with Ms. Aparne Sadre, learned counsel for the petitioner, Mr. Guru Shiroadkar, Additional Government Advocate for respondent nos.1 to 4 and Mr. Ambekar, for the respondent no.5/employer.

2. The petitioner was employed with respondent

no.5 as a Helper Mechanic and by Order dated 13th May, 1994, he was dismissed from service based on the findings recorded in the domestic enquiry against him. He, therefore, approached the Assistant Labour Commissioner under the Industrial Disputes Act, 1947 ("the Act" for short) and, consequently, by Order dated 18th August, 1995, the State Government referred the issue of legality and justifiability of the said order of dismissal to the Industrial Tribunal. It came to be registered as Ref.No.IT/40/95. The learned Presiding Officer of the Industrial Tribunal at Panaji, on evaluation of the oral and documentary evidence led by the respective parties allowed the reference by his Award dated 15th November, 2002 and set aside the order of dismissal as being illegal and unjustified. Consequently, the petitioner was ordered to be reinstated in service with full back wages and all other consequential benefits with continuity of service.

3. This Award of the Industrial Tribunal came to be published as required under Section 17 of the Act by the Special Secretary (Labour), Government of Goa, vide Notification dated 27th November, 2002, with copies to the parties before us as well as the Commissioner, Labour and Employment, Government of Goa and the Director of Printing and Stationery, Government of Goa. The petitioner approached the Labour Commissioner on 27th May, 2003, with an application filed under Section 33C(1) of the Act for

recovery of the amount of full back wages pursuant to the Award dated 15th November, 2002, passed by the Industrial Tribunal and the Labour Commissioner issued a recovery certificate on 14th/18th November, 2003, and called upon the Collector, North Goa, to deposit the said amount in the Treasury under the head of account "8443-Civil deposit, 00, 116-deposit under various Central and State Acts, 01 Recovery of dues under Industrial Disputes Act, 1947". As the petitioner did not hear anything further from the Collector, he submitted a representation on 17th December, 2003, with a reminder on 3rd March, 2004 and, in the meanwhile the Collector had instructed the Mamlatdar on 12th December, 2003 to take appropriate steps. On 6th January, 2004, the Deputy Collector (Revenue), North Goa, issued another Memorandum for the recovery of the dues payable to the petitioner. The second Memorandum was issued on 15th March, 2004 and finally the petitioner moved this Court.

4. On issuing notice the respondent no.5 employer, has filed an affidavit and also a Miscellaneous Civil Application No.729/2004. It has been contended that the Award dated 15th November, 2002, passed by the Industrial Tribunal suffers from patent illegalities and it is a perverse view which does not obligate the employer to honour the recovery certificate issued by the Labour Commissioner. It is further submitted that the said Award has been challenged in Writ Petition No.402/2004 before this Court and

under such circumstances instead of directing respondent no.5 to pay the amount and back wages, it would be appropriate that the Miscellaneous Civil Application No.729/2004 is allowed and the employer is permitted to deposit an amount of Rs.6,43,500/- with the registry of this Court.

5. It was also submitted by Mr. Ambekar, learned advocate appearing for respondent no.5, that publication of the Award passed by the Industrial Tribunal in the Official Gazette, would be relevant data for initiating recovery proceedings under Section 33C(1) of the Act as well as to challenge the Award at the instance of the employer. It is his contention that the Notification dated 27th November, 2002 issued by the Special Secretary (Labour), Government of Go, cannot be termed to be a publication under Section 17 of the Act. The learned advocate for the petitioner on the other hand, insisted that the Notification dated 27th November, 2002 is due publication, within the meaning of Section 17 of the Act and in support of his plea for execution of the recovery certificate, he placed reliance on the Division Bench decision of this Court in the case of **Islam Ali vs. D. Dayaram & Co. & Ors.**, (1998 [80] FLR 719).

6. Section 19(3) of the Act states that an Award shall, remain in operation for a period of one year from the date on which the Award becomes enforceable under Section 17A

of the Act. Section 17A states that an Award shall become enforceable on the expiry of 30 days from the date of its publication under Section 17 and Section 17(1) provides that every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. As per Sub-section (2) of Section 17, subject to the provisions of Section 17A, the award published under Sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever. It is thus clear that in Section 17 as well as Section 17A (1) of the Act the publication of the Award in the Official Gazette is not a requirement set out for its enforcement from the expiry of 30 days period. However, under the proviso to Sub-section (1) of Section 17A the State Government or the Central Government, as the case may be, is empowered to declare that the Award shall not become enforceable on the expiry of the said period of 30 days on public grounds affecting national economy or social justice by Notification in the Official Gazette. This condition of publication of Notification in the Official Gazette is set out only under the proviso to Sub-section (1) of Section 17A and, therefore, the contention of Mr. Ambekar that the publication of the Notification in the Official Gazette is a condition precedent for enforceability of the Award passed by

the Industrial Tribunal is unsustainable. The Award has been published as required under Section 17 of the Act on 27th November, 2002 and it is not disputed that a copy of the said Notification has been received by the advocate of the respondent no.5, who represented it before the Industrial Tribunal. The mode of publication which is not set out under the scheme of the Act cannot be incorporated and the Award in the instant case, therefore became enforceable on expiry of 30 days from 27th November, 2002.

7. Though the employer claims to have challenged the Award of the Industrial Tribunal in Writ Petition No.402 of 2004, the said petition has been admittedly filed on or about 30th August, 2004, i.e. after notice before admission was issued in the instant petition on 22nd July, 2004 by this Court. Mr. Ambekar advanced arguments challenging the illegality of the Award passed by the Tribunal and submitted that he had justifiable reasons not to pay the amount of back wages to the petitioner during the intervening period. These arguments could be considered in Writ Petition No.402 of 2004. It is not in dispute that the recovery certificate issued by the Labour Commissioner on 14th/18th November, 2003, was not challenged by the respondent no.5, employers, in any proceedings and, therefore, the directions as sought for in this petition to the Collector deserve our consideration.

8. After receiving the notice from this Court, the employer has filed Miscellaneous Civil Application No.729 of 2004, seeking leave to deposit the amount of Rs.6,43,500/- with the registry of this Court. We do not find any justification in entertaining this prayer of the employer and more so when the Award became enforceable towards the end of December, 2002, the employer did not take any steps to challenge the Award till this Court issued notice in the instant petition. It would be necessary that the employer takes steps as directed by the Collector and deposits the amount under the head of account as set out in the recovery certificate and any other mode at the request of the employer cannot be entertained. The Collector, North Goa District is hereby directed to ensure that the respondent no.5 deposits the recovery certificate amount under the head of account as set out in the recovery certificate within a period of two weeks from today.

9. The petition is disposed of in terms of the above directions. Miscellaneous Civil Application No.729 of 2004 is hereby rejected.

10. Mr. Ambekar made an oral application for stay to this Order for a period of two weeks.

11. Oral application is hereby rejected.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

mc.